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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

|                          |   |                      |     |
|--------------------------|---|----------------------|-----|
| GUSTAVO ESCUTIA, et al., | ) | No. SA CV 00-841     | AHS |
|                          | ) |                      |     |
| Plaintiffs               | ) |                      |     |
|                          | ) |                      |     |
| v.                       | ) | SETTLEMENT AGREEMENT |     |
|                          | ) |                      |     |
| JANET RENO, et al.       | ) |                      |     |
|                          | ) |                      |     |
| Defendants               | ) |                      |     |
|                          | ) |                      |     |
|                          | ) |                      |     |

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1       WHEREAS, Plaintiffs and Defendants consider it in their best  
2 interests to resolve all the issues raised in this action through  
3 a stipulated settlement agreement;

4       NOW THEREFORE, plaintiffs and defendants (hereinafter "the  
5 parties") enter into and do hereby stipulate to a Settlement  
6 Agreement (hereinafter "Agreement") that imposes binding  
7 obligations upon the parties and their successors to the extent  
8 stated below and that constitutes a full and complete resolution  
9 of the issues in this action.

10       A.    DEFINITIONS

11       As used throughout this Agreement, the following definitions  
12 shall apply:

13       1.    The term "party" or "parties" shall apply to  
14 plaintiffs, plaintiff class members, plaintiffs' counsel, and  
15 defendants. As the term applies to defendants, it shall include  
16 their agents, employees, contractors, and/or successors in  
17 office.

18       2.    The term "applicant" or "applicants" shall apply to  
19 plaintiffs and plaintiff class members.

20       3.    The term "Family Unity Benefits" is defined as benefits  
21 provided by section 301 of the Immigration Act of 1990, 104 Stat.  
22 4978, and implementing regulations.

23       4.    The term "initial application" is defined as the first  
24 application for Family Unity Benefits filed by an applicant.

25       5.    The term "renewal" is defined as an application for an  
26 extension of the original 2-year period of voluntary departure  
27 which is granted to successful initial applicants under the  
28

1 Family Unity Program.

2 B. DURATION AND SCOPE OF THIS AGREEMENT

3 6. This settlement agreement shall remain in full force  
4 and effect for a period of fifteen (15) months following its  
5 approval by the Court. It shall bind the parties only in dealing  
6 with applications for Family Unity Benefits filed with or  
7 transferred to the California Service Center ("CSC").

8 C. PROCESSING OF APPLICATIONS FOR FAMILY UNITY BENEFITS

9 1. Initial Applications

10 7. Beginning thirty (30) days after approval of this  
11 settlement agreement by the Court, defendants will devote an  
12 average of at least 16 hours per business day to the adjudication  
13 of initial applications for Family Unity benefits filed with the  
14 California Service Center.

15 8. Defendants will maintain this minimum commitment of  
16 resources to such initial applications for the duration of this  
17 agreement, except as set forth in paragraph 9.

18 9. Defendants may reduce or eliminate this average  
19 resource commitment from time to time without triggering the "opt  
20 out" option for plaintiffs that is described in paragraph 11,  
21 provided that the period(s) of reduction or elimination total no  
22 more than 70 business days in any six month period.

23 10. For the duration of the agreement, after any week when  
24 the defendants cease devoting an average of at least 16 hours per  
25 business day to the adjudication of initial applications, they  
26 will promptly notify plaintiffs' counsel. Plaintiffs' counsel  
27

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1 will also be notified when defendants resume devotion of and  
2 average of 16 hours or more per business day to the adjudication  
3 of initial applications.

4 11. Should defendants be unable or unwilling to maintain the  
5 level of resources for initial applications described in  
6 paragraphs 6-9 for a period of 71 business days or more in any  
7 given six month period while this agreement is in effect, and  
8 upon proof that none of the conditions described in paragraph 12  
9 exist, plaintiffs may opt out of part of this agreement. They  
10 may opt out of that portion of the agreement dealing with initial  
11 applications only, and may renew litigation over the pace at  
12 which initial applications are being adjudicated. This agreement  
13 will remain in effect as to all other issues covered by it,  
14 including the pace of adjudication of renewals, the issuance of  
15 employment authorization documents, administrative closure of  
16 removal proceedings, and any other matter raised by their  
17 complaint or dealt with in this agreement.

18 12. Plaintiffs may not partially opt out of the agreement  
19 to the extent described in paragraph 11 if one or more of the  
20 following conditions exist at the time they are notified that  
21 defendants have reduced the commitment of resources below that  
22 described in paragraphs 7-9:

23 a. defendants inform plaintiffs that there are no  
24 longer any initial applications ready for adjudication; or

25 b. after the date of this agreement, Congress enacts a  
26 new law, or Temporary Protected Status [TPS] is offered to  
27

1 citizens of a new country, or current TPS is extended, any of  
2 which add significantly and unexpectedly to the caseload of the  
3 CSC adjudicators, and/or Congress mandates a change in the  
4 priorities for adjudication of applications either directly, or  
5 indirectly by setting mandatory time limits for adjudication of  
6 benefits other than Family Unity; or

7 c. Plaintiffs' counsel have filed a class action  
8 lawsuit challenging the pace at which the defendants are  
9 adjudicating applications at the CSC for benefits other than  
10 Family Unity benefits; or

11 d. A class action suit is filed by any person(s) or  
12 entity(s) challenging the pace at which the defendants are  
13 adjudicating applications at the CSC for benefits other than  
14 Family Unity benefits, and an order is entered requiring the  
15 commitment of adjudication resources to applications other than  
16 Family Unity Benefits.

17 When defendants invoke any of the subparagraphs (a-d) above  
18 as a reason for reducing their commitment of resources, they will  
19 inform plaintiffs of that fact, and where subparagraph (b) is  
20 invoked defendants will identify the new law or TPS obligation  
21 upon which they rely.

22 2. Renewals

23 13. Defendants agree to issue work authorization to  
24 applicants seeking to renew their Family Unity Benefits. For  
25 pending applications for renewals, defendants agree to issue  
26 Employment Authorization Documents (EAD) within 90 days of the

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1 Court's approval of this settlement agreement. For applications  
2 filed on or after the date of Court approval of this settlement  
3 agreement, defendants will issue the EAD's within 90 days of the  
4 filing of the applications.

5 D. UNLAWFUL PRESENCE

6 14. Defendants agree to issue a policy memorandum within 90  
7 days of the Court's approval of this settlement agreement,  
8 memorializing the INS's position regarding family unity benefits  
9 and unlawful presence. Defendants will show the memorandum to  
10 plaintiffs' counsel, and provide them with a reasonable  
11 opportunity to provide comments, before it is issued. It will be  
12 issued to INS district offices, district and regional counsel,  
13 and to the Department of State.

14 E. REMOVAL AND ADMINISTRATIVE CLOSURES

15 15. Defendants will not agree to refrain from instituting  
16 or proceeding with removal proceedings simply because an alien  
17 has a pending family unity application.

18 Defendants will, however, place in the policy memorandum  
19 described in paragraph 14, a reminder to district offices that  
20 they may, as a matter prosecutorial discretion, refrain from  
21 instituting proceedings or agree to administrative closure on a  
22 case by case basis when proof of filing an application for Family  
23 Unity benefits is presented to them.

24 F. DISPUTE RESOLUTION AND CONTINUING JURISDICTION

25 16. The parties agree to the following dispute resolution  
26 mechanism, which must be followed before a party may seek any  
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1 relief from the Court:

2 a. Notice of Claimed Violation

3 Upon learning of any fact or facts that constitute the basis  
4 for asserting that a party, without notice or good cause shown,  
5 has engaged in a pattern or practice constituting substantial  
6 noncompliance or a material breach of the terms of this Agreement  
7 or that any party has expressly repudiated any of its terms, the  
8 complaining party shall notify the other party ("responding"  
9 party), in writing, of the fact or facts that form the basis of  
10 the complaint and request a report on any action to be taken with  
11 respect thereto prior to invoking the enforcement provisions of  
12 this Agreement. The parties agree that such allegations of  
13 violations of this Agreement must be substantiated with specific  
14 detailed information about the violation sufficient to enable the  
15 responding party to investigate and respond.  
16  
17

18 b) Response of Adverse Party

19 Within 30 days after receipt of such notice the responding  
20 party shall notify the complaining party of the results of its  
21 investigation of the facts and any action it has taken or intends  
22 to take in connection therewith.  
23

24 Within 30 days thereafter, the parties shall negotiate in  
25 good faith in an effort to resolve any disputes remaining after  
26 completing the actions set forth subparagraphs (a) and (b).  
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1           17. The parties agree that the provisions set forth in  
2 paragraph 16 are not applicable to claims that the defendants  
3 have failed to comply with any duty or obligation described in  
4 paragraph 7 regarding the resources committed to the processing  
5 of initial applications for Family Unity Benefits. For any such  
6 claim plaintiffs sole recourse is to opt out of the Agreement as  
7 provided in paragraphs 11 and 12.  
8

9           18. The parties further agree that the provisions in  
10 paragraph 16 shall not be invoked for *de minimus* violations. For  
11 purposes of paragraph 13 (requiring defendants to issue EAD to  
12 new renewal applicants for Family Unity Benefits within ninety  
13 (90) days of the filing of the application, and requiring  
14 defendants to issue EAD to pending renewal applicants for Family  
15 Unity Benefits within ninety (90) days of the effective date of  
16 this agreement), a *de minimus* violation is defined as failure by  
17 defendants to meet the processing time in any particular instance  
18 within five or fewer business days after the expiration of the  
19 processing time period.  
20

21           19. The parties further agree that, for purposes of  
22 allegations that defendants have not complied with the processing  
23 times described in paragraph 13 of this Agreement, allegations of  
24 noncompliance do not constitute allegations of a pattern or  
25 practice violation unless, in the absence of unforeseeable  
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1 circumstances, it is alleged that defendants fail to meet such  
2 processing times in six or more instances over a three month  
3 period, and further alleged that such failures are not *de minimus*  
4 violations as defined in paragraph 18. While meeting this  
5 threshold entitles plaintiffs to take advantage of certain  
6 provisions of this settlement agreement, it is not a concession  
7 by defendants that a pattern or practice of violations exists,  
8 and defendants reserve the right to raise any defense to the  
9 allegations in court proceedings, including the defense that no  
10 pattern and practice exists.  
11

12 20. The parties also agree that any failure by defendants  
13 to comply with the application processing times described in  
14 paragraph 13 of this Agreement does not constitute a violation of  
15 this Agreement in the case of unforeseeable circumstances. The  
16 term "unforeseeable circumstances," as used in this paragraph and  
17 paragraph 19, includes major disruptions of normal business  
18 caused by computer failures, power outages, fires or other  
19 accidental damage to records or equipment, an immigration  
20 emergency that requires diversion of resources from all but the  
21 most time-sensitive categories of applications, and other  
22 circumstances of this nature and gravity or greater, but does not  
23 include the normal fluctuation in the number of Family Unity  
24 Benefit applications submitted to the California Service Center.  
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1           21. For inquiries or complaints by individual class members  
2 about the status of their individual applications, defendants  
3 will establish a point of contact. Defendants will notify  
4 plaintiffs' counsel of the name of the point of contact, and  
5 provide contact information, upon approval of the settlement  
6 agreement.

7           22. The Court will not retain continuing jurisdiction to  
8 supervise the implementation of this Agreement or to enforce its  
9 terms, except as follows: The Court will retain continuing  
10 jurisdiction for the duration of this Agreement as set forth in  
11 paragraph 6, for the purposes of resolving (a) claims by  
12 plaintiffs that defendants or their successors have expressly  
13 repudiated this Agreement, or (b) claims by plaintiffs that  
14 defendants or their successors have engaged in a pattern or  
15 practice of violations constituting substantial noncompliance or  
16 a material breach of the terms of this Agreement. Upon approval  
17 of this settlement agreement by the Court plaintiffs will move to  
18 dismiss this case, without prejudice to reinstatement for the  
19 limited purpose of dealing with any matter over which the Court  
20 retains jurisdiction under this agreement. Upon expiration of  
21 the agreement, the parties agree that the case will be dismissed  
22 with prejudice. Upon expiration of the agreement, any class  
23 member who has pursued the grievance procedure described in  
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1 paragraph 16 without success for an alleged violation of this  
2 agreement, may file an individual suit challenging the underlying  
3 conduct which caused him or her to use the grievance procedure,  
4 but the suit must be based upon a claimed violation of law, and  
5 not upon a claimed violation of any terms of this agreement.  
6 Defendants do not waive any defenses they may have to such new  
7 suits.  
8

9 23. In exercising the retained jurisdiction, the Court  
10 shall not act on any matter until the complaining party has  
11 initiated and completed the dispute resolution mechanism set  
12 forth in paragraph 16. Nor shall the Court modify or expand in  
13 any way the undertakings of the parties hereunder without consent  
14 of all parties.  
15

16 G. REPORT

17 24. Defendants agree to report the number of Family Unity  
18 applications adjudicated by the CSC every quarter to plaintiffs'  
19 counsel.  
20

21 H. CERTIFICATION OF CLASS

22 25. The parties agree that the Court will certify a class  
23 of plaintiffs consisting of:

24 All applicants for Family Unity benefits under Section  
25 301 of the Immigration Act of 1990, whose applications  
26 are pending at the California Service Center on the  
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1 date of the Court's approval of this agreement or are  
2 filed with or transferred to the California Service  
3 Center during the 15 months in which this agreement  
4 will be in effect.

5 If approved by the Court, this settlement agreement will be  
6 binding upon the class.

7 I. NOTICE TO THE CLASS

8  
9 26. Notice of this settlement agreement shall be provided  
10 to the class as follows:

11 a. by placement of a notice and the agreement on the  
12 INS internet website;

13 b. by distribution of the agreement to the Community  
14 Relations Office located within each INS District Office within  
15 the jurisdiction of the CSC;

16 c. by distribution of the agreement to all immigration  
17 assistance providers listed on the Roster of Recognized  
18 Organizations and Accredited Representatives maintained by the  
19 Executive Office for Immigration Review pursuant to 8 C.F.R. 292.

20  
21 J. ATTORNEYS FEES AND COSTS

22 27. Defendants agree to pay to plaintiffs the total sum of  
23 \$12,000 as full settlement of any and all claims for attorneys'  
24 fees, costs and expenses whether sought under the Equal Access to  
25 Justice Act or otherwise, incurred in this litigation and to be  
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1 incurred in implementing this settlement agreement. Payment of  
2 this amount of fees will be made within 60 days after the  
3 effective date of this Agreement. Such payment shall be executed  
4 in the name of the American Immigration Law Foundation, Employer  
5 ID No. 52-1549711, and forwarded to the first address set forth  
6 below the signature of plaintiffs' counsel.  
7  
8  
9

10 THE PLAINTIFFS

THE DEFENDANTS

11  
12 BY: \_\_\_\_\_

BY: \_\_\_\_\_

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Dated:

Dated: